

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
C.P.NO.546 OF 2015 (IN OA 2266/14)

New Delhi, this the 1st day of March, 2017

CORAM:

**HON'BLE SHRI SHEKHAR AGARWAL, ADMINISTRATIVE MEMBER
AND**

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

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1. Ex-Sub Major Dalbir Singh, JE (E&M),
JC-174758P, Aged about 52 years,
R/o Flat No.E-902, Sispal Vihar,
Sector-49, Gurgaon, Haryana
2. Ex-Nk Onkar Singh, JE(E& M),
No.1579019W,
Aged about 45 years,
R/o Dipti Sahab Ka Hata Bishungarh Road,
Chhibramau, Dist. Kannauj,
UP-209721
3. Ex-Sub Major Subash Chand JE (E&M),
JC-191535N,
Aged about 50 years,
R/o Vill Habibpur, P.O.Lshana,
Dist.Muzaffar Nagar 251309
4. Ex Sub Major Nadarge Chandrashekhar,
Pandurangarao JE(E&M),
JC-325822F,
Aged about 50 years,
R/o Ganga Gagan Housing Society, Wing-D,
Flat 4, Ghorpari Gaon, Behind Anand Theatre,
Pune-1
5. Ex- Sub Major Harish Singh Dangi, JE (E&M),
JC-174818Y,
Aged about 51 years,
R/o H.No.147, Ward No.1, Near FCI Godown,

Haldwani Road,
Kichha, Post Kichha,
Dist. U.S.Nagar, Uttrakhand

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Petitioners

(By Advocate: Mr.M.K.Bhardwaj)

Vs.

1. Shri G.Mohan Kumar,
Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. Lt. Gen. Sanjiv Talwar, AVSM,
Engineer-in-Chief,
Rajaji Marg, Kashmir House,
New Delhi.
3. Brig. S.K.Kataria,
Record Officer,
BEG & Centre,
CCA-III Section,
Roorkee, Uttarkhand 908779, C/o 56 APO
4. Sh.A.K.Arora,
DG (Pers.),
E-in-C Branch, Rajaji Marg,
Kashmir House, New Delhi

í í Respondents

(By Advocate: Mr.B.K.Barera)

ORDER

Per Raj Vir Sharma, Member(J):

The five petitioners in CP No.546 of 2015 were applicants in OA No.2266 of 2014. Holding that the applicant-petitioners were entitled to the same benefits as had been extended to other similarly situated applicants in

OA No.1239/14 (decided on 13.4.2015) and OA No.808/13 (decided on 29.4.2015), the Tribunal, by its order dated 29.5.2015, disposed of O.A.No.2266 of 2014, vide order dated 29.5.2015, the relevant part of which reads thus:

õ22. Even after the judgment had been reserved for orders on 06.05.2015, on 07.05.2015 the learned counsel for the applicants filed further written submissions. In this he had submitted that apart from the case in the present OA being covered by the order dated 29.04.2015 in OA No.808/2014 Ex-Sub Maj Rajiv Naharia & Ors. vs. Union of India & Ors., the case of the applicants was also covered by another judgment dated 13.04.2015 in OA No.1239/2014 Ex. Sub/Maj Vidyadhar Swami & Ors. vs. Union of India & Ors.. He had pointed out that in the case of Ex. Sub/Maj Vidyadhar Swami & Ors. (supra) also the case of the applicants was that his application had been submitted in between the two relevant dates, and the delay had been caused only by the respondents, for no fault of the applicants, because of which the OA had been disposed of with directions to the competent authority to take appropriate decision in the matter, under intimation to the applicants, within two months. In the case of Ex-Sub Maj Rajiv Naharia & Ors. (supra) also, on 29.04.2015, the Bench in which one of us was a Member, had held as follows:-

õ2í í í í From 27.04.2011 to 16.04.2012, the prescribed recruitment rules said that even retired persons shall also be considered. Thereafter, w.e.f. 17.04.2012, the Column 11 of the Schedule to RRs was amended for Note 2 to provide that the retired persons would no longer be eligible for DCRE, but only persons who are about to retire, or to be transferred to reserve within a year would be eligible. Therefore, by an amendment in the RRs, the retired persons, who were eligible under rules in between 27.04.2011 to 16.04.2012 were excluded, and it was provided that the amendment dated 17.04.2012 would have retrospective effect. This aspect is covered by the decisions of this Bench in OA No. 2214/2014 & Ors. Decided on 21.05.2014. After serving the country for so many years, if ex-servicemen are made to run from pillar to post to earn further livelihood, it would reflect badly on the governanceí í ..

3. It appears that the issue also arose because of nobody's fault. But at that point of time, there was no vacancy, so MES could not have taken any action. Therefore, the word about to retire became irrelevant at that point of time. However, the Bench in the earlier OA had decided the matter proactively and dynamically by holding that by one time relaxation, the concerned applicants would be deemed eligible for DCRE under the recruitment rule whether it is deemed amended or pre-amended. It is also noticed that the word 'retired' shall be deemed to be present; even otherwise also, these measures are made and incorporated in a system as an encouragement for ex-servicemen. Therefore, the way to look at it will be in general public interest and in the welfare of the ex-servicemen. This is a case in which morality cannot be taken away or subtracted from legality. Legality must be understood in terms of morality which would be to grant appointment to the ex-servicemen. Therefore, we hold that the applicants are entitled to same benefits as have been extended to other similarly situated applicants in OA No. 2214/2010. The OA is allowed.

23. It is, therefore, amply clear that the applicants of this OA are also entitled to the same benefits as have already been granted by the Coordinate Benches in the above cited cases. The result of all these judgments would be that anybody who had retired in the interregnum period in between 27.04.2011 to 16.04.2012, before the retrospective amendment dated 17.04.2012 came into effect, shall not be hit by the prescription in the amendment, that that amendment was retrospective in nature, and operative from 27.04.2011 itself.

24. Therefore, the OA is allowed to that extent, with further directions upon the respondents to calculate the 20% vacancies of PBOR w.e.f. 27.04.2011, and 10% vacancies of PBORs before that date, and maintain a proper register regarding the filling up of such year-wise PBOR vacancies separately, which cannot accrue to any of the two other categories of the modes of the recruitment, to the detriment of the persons who are 'retiring' or 'have retired' in the interregnum period from 27.04.2011 to 16.04.2012. This is the ratio of all the above cited judgments also, strictly as per the Rules.

It is stated by the applicant-petitioners that the copy of the order was received by the respondents in June 2015. Thereafter, they also sent a letter

dated 11.6.2015 requesting the respondents to implement the Tribunal's order dated 29.5.2015 without any further delay. In spite of this, the respondents have failed to implement the Tribunal's order dated 29.5.2015. Therefore, according to the applicant-petitioners, the respondents have willfully and deliberately flouted the Tribunal's order dated 29.5.2015. Hence, the applicant-petitioners have filed the present CP on 17.8.2015 for initiation of contempt proceedings against the respondents for willful disobedience of the Tribunal's order dated 29.5.2015, *ibid*, and for other consequential directions to the respondents.

2. On 29.2.2016, the respondents filed a reply stating, *inter alia*, that in compliance with the order passed by the Tribunal in OA No.2266 of 2014, the respondents have considered the cases of the applicant-petitioners for appointment as JE (Civil) and JE(E/M) under DCRE. Applicant-petitioner no. 5 has been selected for appointment under DCRE. Applicant-petitioner no.1 will be considered for appointment by March 2016. Applicant-petitioner nos. 2, 3 and 4 were considered for appointment, but were kept as reserve; their positions being lower in merit. In support of their statement, the respondents have filed a copy of the list of incumbents who were considered and selected for appointment and of incumbents who were considered but were kept as reserve.

2.1 On 20.12.2016 the respondents filed an additional affidavit stating, *inter alia*, that applicant-petitioner nos. 2 and 5 have already been issued appointment letters. The other remaining applicants are in the reserve

panel and in case the selected candidates fail to join the duty within the stipulated time of joining, the candidates from the reserve panel will be offered appointment. The Tribunal decided OA No.2025 of 2015 and other connected O.As., vide its order dated 23.9.2016, the relevant portion of which reads thus:

õ6. It is the contention of the learned counsel for the respondents that the respondents have taken due steps to implement the order of this Tribunal as well as try to ensure that the ex-servicemen are treated fairly. We do not deny the genuine efforts made by the respondents. The question is that their offer is open ended. We therefore, dispose of all these OAs with a direction to the respondents that they may issue a public notice giving reference to their earlier notices fixing cut off date not beyond 60 days before which any ex-servicemen out of the total panel, who is interested may give their preference for appointment. Wide publicity may be given to this, if necessary, through Army Welfare Association, etc. After the stipulated cut-off date, appointments shall be made strictly according to merit list within a time frame of ninety days from the cut off date stipulated by them for the vacancies existing now. For future vacancies, they will follow similar procedure. We make it abundantly clear that offer should be made to all retired ex-servicemen irrespective of the date of the retirement. In case, anybody's appointment is rejected on the ground that they do not have the requisite qualifications on merit, before taking a decision, the respondents shall communicate this to the concerned ex-servicemen through a show cause notice and take a decision after consideration of his show cause. No costs.

In compliance with the above order of the Tribunal, the respondents issued a letter dated 26.10.2016 to all Commands to strictly adhere to the timelines. The respondent-Department is now following the Tribunal's order and instructions for issuing of fresh appointment letters from the reserve list in place of those who did not join within the stipulated time.

2.2 On 31.1.2017 the respondents filed a compliance affidavit stating, inter alia, that they are operating the list as per the order dated

23.9.2016 passed by the Tribunal in OA No.2025 of 2015 and other connected O.As. Along with their compliance affidavit, the respondents have also filed lists of selected persons from reserve panels for different periods from 1.1.2008 to 31.3.2015.

3. We have heard Mr.M.K.Bhardwaj, the learned counsel appearing for the applicant-petitioners and Shri B.K.Barera, the learned counsel appearing for the respondents.

4. It is not in dispute that a large number of O.As. were filed by different persons who were similarly placed as the applicant-petitioners in the present proceeding, and the Tribunal disposed of those O.As. by passing various orders on different dates. Determination of year-wise vacancies not only under the pre-amended Recruitment Rules but also under the amended Recruitment Rules, and consideration of the applicants who approached the Tribunal in different O.As. and other eligible persons who opted for consideration of their cases for appointment under DCRE in compliance with the orders passed by the Tribunal from time to time are time consuming processes. However, the respondents have already considered the cases of the applicant-petitioners for appointment under the DCRE. Applicant-petitioner nos. 2 and 5 have already been issued appointment letters. The other remaining applicants are in the reserve panel, and in case the selected candidates fail to join the duty within the stipulated time of joining, the candidates from the reserve panel will be offered appointment. If at all there is any delay on the part of the respondents in considering the cases of the

applicant-petitioners for appointment under DCRE, such delay cannot be said to be intentional or deliberate. Therefore, the respondents cannot be said to have willfully and deliberately flouted the Tribunal's order dated 29.5.2015 passed in OA No.2266 of 2014.

5. It is trite law that contempt jurisdiction is to be exercised sparingly and in very deserving cases only and not casually. Such a power is not intended to be exercised as a matter of course.

6. In the light of our above discussions, we do not find a *prima facie* case of contempt of this Tribunal to have made out by the applicant-petitioners against the respondents. Accordingly, the Contempt Petition is dismissed, and the notices issued against the respondents are discharged. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SHEKHAR AGARWAL)
ADMINISTRATIVE MEMBER

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